Filed 11/9/09 Garland v. Garland CA4/1

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

MARK E. GARLAND, Plaintiff and Respondent, v. SHANE M. GARLAND, Defendant and Appellant.	D053636 (Super. Ct. No. DV027530)

APPEAL from an order of the Superior Court of San Diego County, Jeffrey S. Bostwick, Judge. Affirmed.

Shane Garland, in propria persona, appeals from a restraining order entered in favor of his brother, Mark Garland.[1] In part, the order prohibits Shane from contacting Mark and requires him to stay at least 100 yards away from him for a period of three years. On appeal, Shane challenges the order on various grounds that we attempt to

1 For the sake of clarity and not intending any disrespect, we hereafter refer to the parties by their first names. In his application for a temporary restraining order, Mark referred to appellant as Matthew S. Garland. However, we refer to appellant by the name Shane, which is the name he uses in his pleadings.

describe below. As we shall explain, Shane has mostly forfeited his arguments and has otherwise shown no basis to reverse the trial court's order. Accordingly, we affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

In July 2008, Mark applied for a temporary restraining order (TRO) against his brother, Shane, with whom he was living. In a sworn declaration, Mark recounted Shane's recent attack on one of their other brothers and his history of mental instability, aggression and violent outbursts. According to Mark, Shane had a history of paranoid schizophrenia coupled with alcohol abuse, causing him to become "hyper aggressive" and resort to physical abuse. Mark stated that in June 2008, Shane was hospitalized for wounds he sustained after he had attacked one of their other brothers, and after undergoing a psychiatric evaluation, Shane was admitted to the psychiatric unit. A social worker informed Mark that Shane had a "classic case" of paranoid schizophrenia, that Mark should obtain a TRO for his own protection, and that the brothers should not be in the same house.

Mark stated he was 61 years old with diabetes and disabled from a serious back injury, and was helpless to defend himself against Shane's violent outbursts. He explained that Shane had recently started drinking again, causing him to become unstable and violent, and this development, combined with Shane's mental condition, led Mark to believe Shane presented a danger to his life, even though his recent abuse had not been directed at Mark.

The matter was heard on July 22, 2008, with the parties representing themselves. Mark began to recount Shane's recent altercation with their brother Martin. The trial court interrupted and asked why Martin was not seeking the order. Mark explained that Martin had applied for such an order but that it was set for a future date; that "they were to be merged and never sent me a merged [*sic*]." Mark explained that Shane had a track record with the police department and had assaulted a sheriff's deputy in prison, where he had been screened and declared paranoid schizophrenic. He also stated that Shane had attacked their mother resulting in Shane's admission to Charter Hospital, where the psychiatrist advised him and his family to abandon Shane so that he could get help.

Shane explained that a fight had broken out between him and his brother after a night of drinking, and that his brother Martin had stabbed him during the struggle. When the trial court asked if he had emotional or mental health issues, Shane admitted he was "disturbed" and that at bars and restaurants he heard his name and perceived "talk that people direct at me sometimes." He denied schizophrenia, however, stating, "That is in my past history." Shane also denied attacking Mark two years before, claiming it was "more like a little sumo wrestling match." Shane explained he only fought with his brother Martin and had done so since they were high school students, but admitted that he had "heavy arguments" with Mark. When asked if he also fought with Mark, Shane stated: "Sometimes they are so mentally tight with me that I have to confront them." Shane refused to characterize that as a fight.

The court granted Mark's application for the restraining orders, stating: "There's enough fighting and conflict going on in this house to put a stop to it. Your story about

not being an aggressor with Mark is not credible and clearly you were the primary aggressor. We'll take up the issue the next time the court hears the case of Marty. You need to stop fighting with your brothers." It entered a restraining order in favor of Mark as the protected person, including contact prohibitions, an order forbidding Shane from owning or possessing firearms, and a requirement that Shane stay at least 100 yards away from Mark's residence and vehicle.

Two days later, Shane filed a declaration expressing "confus[ion]" about the "combining of the two cases" and attempting to recount his side of the matter. He stated that his second oldest brother (presumably Mark) was not present during the incident and described a fight that had taken place years ago involving a "scuffle" and "verbal abuse." Shane averred, "I have never pummeled my older brother or beat him down . . . I feel that maybe the judge confused the time frame in which this so called spat had taken place[.]"

Shane filed a notice of appeal identifying two lower court case numbers (the present case, and San Diego Superior Court case No. DV027530), and indicating he was appealing a July 28, 2008 judgment after a court trial. He thereafter filed a civil case information statement (Cal. Rules of Ct., rule 8.100(g)) identifying his appeal as from a July 22, 2008 judgment.[2]

---

[2] Because Mark has not filed a respondent's brief, we determine the appeal based on the record provided and appellant's opening brief. (Cal. Rules of Court, rule 8.220(a)(2).)

DISCUSSION

I. *Sufficiency of Shane's Notice of Appeal*

To be sufficient, the notice of appeal must "identif[y] the particular judgment or order being appealed." (Cal. Rules of Ct., rule 8.100(a)(2).) Notices of appeal are liberally construed so as to protect the right of appeal if it is reasonably clear what appellant was trying to appeal from and so long as the respondent could not possibly have been misled or prejudiced. (*Luz v. Lopes* (1960) 55 Cal.2d 54, 59; *D'Avola v. Anderson* (1996) 47 Cal.App.4th 358, 361.) In the absence of a sufficient notice of appeal, there is no appellate jurisdiction. (See *Beets v. Chart* (1889) 79 Cal. 185; *Norman I. Krug Real Estate Investments, Inc. v. Praszker* (1990) 220 Cal.App.3d 35, 47.)

Shane's notice of appeal does not identify the July 22, 2008 order. (Cal. Rules of Ct., rule 8.100(a)(2).) Instead, the notice identifies a judgment appealed from as being entered on July 28, 2008. However, Shane's civil case information statement identified a July 22, 2008 judgment and attached the trial court's minute order of the same date granting the restraining order. We conclude that under these circumstances, it is reasonably clear Shane was trying to appeal the July 22, 2008 order granting Mark's requested restraining order, and we will construe the notice of appeal as identifying the July 22, 2008 order. Accordingly, we have jurisdiction to address claims of error relating to that order, which is an appealable order under Code of Civil Procedure section 904.1, subdivision (a)(6).[3]

---

3 All statutory references are to the Code of Civil Procedure unless otherwise stated.

II. *Appellate Review Standards*

In resolving Shane's contentions, we apply settled principles of appellate review. Specifically, "it is settled that '[a] judgment or order of the lower court is *presumed correct.* All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error.' " (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) " 'A necessary corollary to this rule is that if the record is inadequate for meaningful review, the appellant defaults and the decision of the trial court should be affirmed.' " (*Gee v. American Realty & Construction, Inc.* (2002) 99 Cal.App.4th 1412, 1416.)

It "is counsel's duty by argument and citation of authority to show in what respects rulings complained of are erroneous." (*Wint v. Fidelity & Casualty Co.* (1973) 9 Cal.3d 257, 265.) All litigants are bound by the rule that "[t]he reviewing court is not required to make an independent, unassisted study of the record in search of error or grounds to support the judgment. It is entitled to the assistance of counsel. Accordingly, every brief should contain a legal argument with citation of authorities on the points made. If none is furnished on a particular point, the court may treat it as waived, and pass it without consideration." (9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 594, p. 627.) Points are deemed abandoned when they are entirely unsupported by argument or reference to the record. (*City of Lincoln v. Barringer* (2002) 102 Cal.App.4th 1211, 1239; *Landry v. Berryessa Union School Dist*. (1995) 39 Cal.App.4th 691, 699; *Renden v. Geneva Development Corp.* (1967) 253 Cal.App.2d 578, 591; Cal. Rules of Court, rule

8.204(a)(1)(C) ["Each brief must . . . [¶] . . . [¶] . . . [s]upport any reference to a matter in the record by a citation to the volume and page number in the record where the matter appears"].) Further, lack of organization and failure to properly format a brief may lead to a forfeiture of arguments. (*Evans v. Centerstone Development Co.* (2005) 134 Cal.App.4th 151, 165 ["lack of organization and the improper format" of appellate brief resulted in waiver of arguments alluded to but not properly developed].)

III. *Appellant Has Largely Forfeited his Arguments*

In the present appeal, Shane makes a series of arguments under rather inscrutable headings, such as "Direction to Key Elements," "Cognitive Health," "@2020," and "Getting Your Rights." We nevertheless attempt to interpret the substance or gist of his arguments.

First, citing Family Court Local Rule 5.2.5 concerning consolidation, he argues the court erred by consolidating Mark's and Martin's cases, and the trial court "ignored" the lead case or somehow altered court records to "shield a case involving a serious crime." Second, citing nonbinding out-of-state authorities, he raises some question concerning the trial court's jurisdiction, which we are unable to further understand. Third, he argues he was denied his Sixth Amendment right to a fair trial; that his right to a fair trial was "obscured" by the consolidation of his brothers' separate restraining order applications. Fourth, he argues the trial court was "in error of evidence" under Federal Rules of Evidence. Fifth, he makes a fairly unintelligible argument suggesting that the two-year statute of limitations has passed on Mark's complaints. Sixth, he argues his civil rights were violated because he was not in "substantial cognitive or temporal health

to answer to the courts" and presumably unready or incompetent to appear. Seventh, he contends he was denied the right to a "pretrial service" or to present certain testimony. Eighth, he argues he was denied his Sixth Amendment right to counsel. Ninth, he appears to contend he was denied some unspecified "property right" by being forced from his residence. Finally, he apparently contends the court erred by limiting his ability to own and possess firearms.

The vast majority of Shane's contentions lack reasoned legal argument or citation to pertinent or persuasive authorities, and under the settled appellate principles outlined above, they are forfeited. Many of Shane's contentions are based upon a fundamental misconception of the record: that the trial court consolidated Mark's application for a temporary restraining order with Martin's application. However, the reporter's transcript shows that the trial court *did not* consolidate the cases and there is no consolidation order in the clerk's transcript. Thus, we reject Shane's evidentiary and jurisdictional challenges (which are vague and unsupported by pertinent authority in any event) to the extent they are premised on his belief that the trial court had consolidated the cases.

Additionally, Shane's appellate arguments appear to misunderstand the nature of the civil restraining orders entered by the trial court. Mark sought injunctive relief under section 527.6. There is no right to a jury trial in a civil action seeking injunctive relief, which is equitable in nature. (See § 527.6, subd. (d) [trial court makes an "independent inquiry" into the facts]; *C & K Engineering Contractors v. Amber Steel Co.* (1978) 23 Cal.3d 1, 8 [right to jury trial is limited to actions at law and does not apply to proceedings in equity]; *Baugh v. Garl* (2006) 137 Cal.App.4th 737, 740; *People v.*

Englebrecht (2001) 88 Cal.App.4th 1236, 1245 [essence of an action for injunctive relief is equitable and there is no right to a jury trial].) Consequently, Shane was not entitled to a jury trial on Mark's section 527.6 petition. Nor has he persuasively shown he was entitled to constitutional protections afforded to criminal defendants.

Finally, Shane makes arguments (statute of limitations, inability to appear due to his health) that he did not raise in the trial court. We shall not consider for the first time on appeal contentions or theories that contemplate factual situations open to controversy. (See *City of San Diego v. D.R. Horton San Diego Holding Co., Inc.* (2005) 126 Cal.App.4th 668, 684-685.)

IV. *Propriety of Restraining Order*

Section 527.6 provides that a temporary restraining order and an injunction prohibiting harassment may be sought when there is harassment; that is, "unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the plaintiff." (§ 527.6, subd. (b).) "Unlawful violence" is defined as "any assault or battery, or stalking . . . , but shall not include lawful acts of self-defense or defense of others." (§ 527.6, subd. (b)(1).)

A trial court must find clear and convincing evidence that unlawful harassment exists. (§ 527.6, subd. (d).) If the court determines that a party has met the "clear and convincing" burden, its determination will not be disturbed on appeal without a showing

of a clear abuse of discretion. (*Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 904, 912; *Ensworth v. Mullvain* (1990) 224 Cal.App.3d 1105, 1111, fn. 2.) We review the trial court's evidentiary findings under the substantial evidence standard, resolving all factual conflicts and questions of credibility in the respondent's favor and drawing all legitimate and reasonable inferences to uphold the judgment. (*Shapiro*, at p. 912; *Schild v. Rubin* (1991) 232 Cal.App.3d 755, 762.) Even if the evidence at the hearing is subject to more than one reasonable interpretation, we may not reweigh the evidence or choose among alternative permissible inferences. (*Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 630-631.) In that case, we are without power to substitute our deductions for those of the trial court. (*Shapiro*, at p. 912.)

Relevant to this appeal, "[a]rguments should be tailored according to the applicable standard of appellate review." (*Sebago, Inc. v. City of Alameda* (1989) 211 Cal.App.3d 1372, 1388.) Here, Shane must show the trial court abused its discretion in entering the restraining orders in Mark's favor; he must explain how the trial court's decision exceeds the bounds of reason and results in a miscarriage of justice. (*Denham v. Superior Court*, *supra*, 2 Cal.3d at p. 566; *Fassberg Const. Co. v. Housing Authority of City of Los Angeles* (2007) 152 Cal.App.4th 720, 762-763.) He has not made that showing here. Nor has he addressed the trial court's factual findings or the sufficiency of Mark's evidentiary showing in his supporting declaration and testimony at the hearing. We presume the record contains evidence to support every finding of fact, and absent a fair summary of the evidence and explanation as to why it is insufficient, we shall not disturb the trial court's factual findings. (*Huong Que, Inc. v. Luu* (2007) 150 Cal.App.4th

400, 409.) We conclude in any event that the record contains sufficient evidence that Shane committed acts of unlawful violence, or that he engaged in a knowing and willful course of conduct directed at Mark that seriously alarmed, annoyed, or harassed Mark, without any legitimate purpose. We therefore affirm the trial court's section 527.6 order.

In reaching our conclusion, we are mindful that Shane represents himself on appeal. However, his status as a party appearing in propria persona does not provide a basis for preferential consideration. "A party proceeding in propria persona 'is to be treated like any other party and is entitled to the same, but no greater[,] consideration than other litigants and attorneys.' [Citation.] Indeed, ' "the in propria persona litigant is held to the same restrictive rules of procedure as an attorney." ' " (*First American Title Co. v. Mirzaian* (2003) 108 Cal.App.4th 956, 958, fn. 1.)

DISPOSITION

The order is affirmed.

O'ROURKE, J.

WE CONCUR:

HALLER, Acting P. J.

AARON, J.